JURISDICTION OF COMMERCE COURT

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

SIXTY-SECOND CONGRESS

SECOND SESSION

ON

H. R. 25751

JULY 16, 1912

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JURISDICTION OF COMMERCE COURT.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Tuesday, July 16, 1912.

The committee this day met, Hon. Henry D. Clayton (chairman) presiding.

The CHAIRMAN. The committee will be in order. Gentlemen of the committee, by invitation of your chairman Mr. Borland, the author of H. R. 25751, has been invited to be present to-day to be heard on this bill. He was also invited to bring with him certain gentlemen who are interested in the passage of this measure.

The bill is in the following language:

[H. R. 25751, Sixty-second Congress, second session.]

A BILL To amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act of Congress entitled "An act to codify, revise, and amend the laws relating to the judiciary," and so forth, approved March third, nineteen hundred and eleven, be, and it is hereby, amended by adding to section two hundred and seven thereof the following: "The court shall also have jurisdiction over all cases brought to correct any error of law made by the Interstate Commerce Commission in granting or refusing to grant relief in any proceeding before said commission."

I have here a telegram dated Kansas City, Mo., July 15, 1912, addressed to—

Hon. HENRY D. CLAYTON,
House of Representatives, Washington, D. C.

On behalf of shippers of the Southwest I earnestly request your favorable consideration of Congressman Borland's bill 25751, or some similar measure, to the end that shippers may have a review of some court to correct errors of law made by the Interstate Commerce Commisssion now denied them under decision Supreme Court in Procter & Gamble case. Letter follows.

R. A. LONG.

The letter has not yet reached the committee; if it comes before these hearings are printed it will be incorporated in the hearings as a part thereof.

Section 207 of the Judicial Code of the United States, which is referred to in the bill now under consideration, is "An act to codify, revise, and amend the laws relating to the judiciary," or the act of March 3, 1911, Thirty-sixth Statutes at Large, 1087. The section which this bill proposes to amend reads as follows:

SEC. 207. The Commerce Court shall have the jurisdiction possessed by circuit courts of the United States and the judges thereof immediately prior to June 18, 1910, over all cases of the following kind:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section 3 of the act entitled "An act to further regulate commerce with foreign nations and among the States," approved February 19, 1903, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section 20 or section 23 of the act entitled "An act to regulate commerce," approved February 4, 1887, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this chapter shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof that is hereby transferred to and vested in the Commerce Court.

The jurisdiction of the Commerce Court over cases of the foregoing classes sha ll be exclusive; but this chapter shall not affect the jurisdiction possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

And the bill provides—

That the act of Congress entitled "An act to codify, revise, and amend the laws relating to the judiciary," etc., approved March 3, 1911, be, and it is hereby, amended by adding to section 207 thereof the following: The court shall also have jurisdiction over all cases brought to correct any error of law made by the Interstate Commerce Commission in granting or refusing to grant relief in any proceeding before said commission.

Now, Mr. Borland, we will be glad to hear from you, and I will say to you and the other gentlemen that the committee is very much pressed for time, as you know, and I know that you and the other gentlemen will state your case, as you can do fully, without taking very much time, although I am not going to limit you.

STATEMENT OF HON. WILLIAM P. BORLAND, A REPRESENTATIVE FROM THE STATE OF MISSOURI.

Mr. BORLAND. I am very much obliged for that opportunity, and I realize the pressure of work that is on the committee. This bill was introduced by me within the last few days at the request of the shippers who have occasion to file complaints before the Interstate Commerce Commission. The immediate object was to correct the situation brought about by the decision of the Supreme Court in what is known as the Procter & Gamble case. In that case they construed the first two clauses of section 207, and decided that the jurisdiction of the Commerce Court to review the orders of the Interstate Commerce Commission extended only to what would be known as affirmative orders, and that where the Interstate Commerce Commission declined to make an order, which would nearly always be the case

where they decided against the shipper, the Commerce Court had no jurisdiction. The situation then is, that if the Interstate Commerce Commission makes an order against the carrier, the carrier has a complete remedy by review; he can go before the Commerce Court in any form; if the order is confiscatory or if it is illegal, he has his appeal; but if the order of the Interstate Commerce Commission dismisses the complaint of the shipper, the shipper, under the decision of the Procter & Gamble case, has no equality of right to have that opinion reviewed.

Mr. STERLING. The United States Commerce Court held that an order of dismissal was an order from which a shipper could appeal.

Mr. BORLAND. It originally held that; but the Supreme Court held to the contrary.

Mr. STERLING. The Supreme Court reversed that holding?

Mr. BORLAND. Yes, sir.

Mr. STERLING. Has this bill which you propose been submitted to the attorneys who were involved in that litigation?

Mr. BORLAND. No; not by me; but we have taken the judgment of Commissioner Prouty and the Interstate Commerce Commission on it, and we will cite the committee to that.

Mr. STERLING. Are they satisfied that this amendment will reach the point?

Mr. BORLAND. Yes; I am going to have that laid before the committee by Mr. Walter. I want to call attention to the language of the Supreme Court, so you will have in mind what we are driving at. The first two clauses of section 207 are as follows:

> First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.
>
> Second. Cases brought to enjoin, set aside, annul, or suspend, in whole or in part, any order of the Interstate Commerce Commission.

This is a positive and negative statement of this court's power over the orders of the Interstate Commerce Commission—the court can either enforce them or it can enjoin their enforcement. The Supreme Court has construed the provision in the last paragraph above quoted to refer only to orders of the Interstate Commerce Commission which are affirmative in character. The language of the Supreme Court in the Procter & Gamble case, decided June 7, 1912, is as follows:

> Giving to these words their natural significance, we think it follows that they confer jurisdiction only to entertain complaints as to affirmative orders of the commission; that is, they give the court the right to take cognizance when properly made of complaints concerning the legality of orders rendered by the commission and confer power to relieve parties in whole or in part from the duty of obedience to orders which are found to be illegal. No resort to exposition can add to the cogency with which the conclusion stated is compelled by the plain meaning of the words themselves. But if it be conceded, for the sake of argument, that the language of the provision is ambiguous, a consideration of the context of the act will at once clarify the subject. Thus, the first subdivision provides for the enforcement of orders; that is, the compelling of the doing or abstaining from doing of acts embraced by a previous affirmative command of the commission; and the second (the one with which we are concerned), dealing with the same subject from a reverse point of view, provides for the contingency of a complaint made to the court by one seeking to prevent the enforcement of orders of the commission such as are contemplated by the first paragraph. In other words, by the cooperation of the two paragraphs, authority is given on the one hand to enforce compliance with the orders of the commission, if lawful, and on the other hand power is conferred to stay the enforcement of an illegal order.

If, however, the complaint of a shipper is dismissed, no affirmative order is made, and the Supreme Court decides squarely that that kind of a ruling by the Interstate Commerce Commission is not reviewable

Mr. HOWLAND. That is not considered an order?

Mr. BORLAND. No; it does not compel anybody to do anything, and therefore it is not reviewable.

Mr. DAVIS. Is there not some reason for it? Is it not on the theory that the Interstate Commerce Commission is not a court but an administrative body?

Mr. BORLAND. Yes.

Mr. DAVIS. And when it acts, and acts to the prejudice of any person, its action may be reviewed in matters of law?

Mr. BORLAND. Yes.

Mr. DAVIS. It can not, however, be compelled to act?

Mr. BORLAND. No.

Mr. DAVIS. But it may remain inactive, within its discretion?

Mr. BORLAND. Yes. Yet the purpose of the creation of the commission is to provide the shippers with that very agency, and if the commission is mistaken about its powers or if it erroneously decides about its power to hear a certain complaint, the shipper ought to have some means of bringing that question of law before a proper tribunal and give the commission some construction of its powers that will enable it to reach the complaint of the shipper. We do not assume, of course, that the Interstate Commerce Commission can be compelled to act where their judgment of the facts is against it, but where their judgment as to their legal powers is against it, then they may need, and they say they do need, some tribunal to decide as to their legal powers, before they are willing to proceed. We have properly safeguarded in this bill against a review of questions of fact; we realize that we should leave with the commission the decision as to all questions of fact. We do not care to have any review of questions of fact, believing that the commission is competent to decide them as a jury. And so this amendment seeked only to give the Commerce Court the power to review errors of law made by the commission, and it is so worded.

We realize that the Commerce Court itself may pass out of existence by contemplated legislation, but in that case, of course, the jurisdiction will be conferred upon the proper tribunal, and all of the jurisdiction of the Commerce Court will fall into the hands of that tribunal.

Mr. NORRIS. Are you satisfied about that proposition?

Mr. BORLAND. That the jurisdiction will fall into the hands of that tribunal?

Mr. NORRIS. Yes.

Mr. BORLAND. Yes; I am satisfied that if the Commerce Court is abolished all of its jurisdiction will fall into the hands of the proper tribunal.

Mr. NORRIS. Suppose the bill providing for the abolishment of the Commerce Court is passed and goes into effect before this act is passed?

Mr. BORLAND. If the act abolishing the Commerce Court is passed before this act is passed, it ought to be amended either in committee or in the House to conform to existing law. But if this act is passed and subsequently the Commerce Court is abolished, I have no doubt

its jurisdiction will go to the proper tribunal. I do not think there will be any difficulty about that. The main point I want to impress upon you is that the shippers have relied upon this agency, the Interstate Commerce Commission, to reach complaints of this nature, and they are the ones who are interested and have asked for this legislation. They would like to have the power of review.

The CHAIRMAN. And this power of review ought to be in the Commerce Court, if the Commerce Court is going to stand, and if not, it ought to be in the district courts?

Mr. BORLAND. Yes, sir. Now, I am going to ask Mr. Walter to make a brief statement of the case, as he has taken this matter up directly with the commission and has ascertained their views as to this legislation.

STATEMENT OF MR. LUTHER M. WALTER.

The CHAIRMAN. Please tell the committee your full name.

Mr. WALTER. Luther M. Walter, of Chicago.

The CHAIRMAN. And your occupation?

Mr. WALTER. I am an attorney and make a specialty of rate matters. For seven years I was attorney for the Interstate Commerce Commission, and only two years ago went into practice.

The CHAIRMAN. We will be very glad to hear from you.

Mr. WALTER. The sole purpose of this amendment is to give the Commerce Court jurisdiction to decide what the law is upon appeal by a shipper who has been denied relief by the commission. The effect of that will be that when an interpretation of the law has been finally had by the Superme Court the commission will apply that to the facts. There will be no interruption whatever in the jurisdiction of the commission or its power upon questions of fact; we are satisfied with what they do on those facts.

I took up this matter with Chairman Prouty immediately after the decision in the Procter & Gamble case, and told him that our purpose was to seek from Congress this remedial legislation, and asked him if he would not communicate with both the House and the Senate. He wrote to Judge Adamson and also to Senator Clapp. I have not seen his letter to Judge Adamson, but he inclosed a copy of his letter to Senator Clapp. He gives his individual judgment upon that matter, and I will read from that letter as transmitted to me:

> Under the decisions of the Supreme Court a railroad may attack our orders upon three grounds (*a*) confiscation, (*b*) an error of law, (*c*) arbitrary and unwarranted action. It seems to me that in some form the shipper should be given the same measure of relief against an error of law upon the part of the commission which the railroad has. The commission is an administrative body. Its administrative judgment can not be properly reviewed by a court in any case. Its decisions often involve mixed conclusions of law and of fact, and I believe that ordinarily such conclusions should not be reviewable by court process either in favor of or against the shipper; but I personally feel that it is in the interest of justice, and, above all, in the interest of the commission, that errors of law committed by it should be corrected in the courts. It is not, in my judgment, a wise or a salutary thing to lodge in any tribunal arbitrary power beyond what is necessary, and I can see no reason why the legal mistakes of the Interstate Commerce Commission could not and should not be corrected.

Now, that is the nut of the case we have. We want the same power in the Commerce Court, or in the district court, for that matter, to correct the mistakes of the commission upon the law that the carrier now has, and I think that this amendment completely safeguards

the commission in determining questions of fact. That is the sole purpose of the statute. If there are any questions as to particular cases that might come up, I shall be very glad to answer them.

Mr. STERLING. The only question in my mind was whether the amendment reached the point, and if the commission thinks so I am satisfied with it, of course.

Mr. WALTER. I have no doubt about it myself, and I think it is so recognized by those officers who have talked this over; that is, that this goes right to the root of the decision in the Procter & Gamble case. Error of law has its well-known signification and reaches certain situations either under the Constitution or the construction of a statute.

Mr. HOWLAND. You only have an abstract from the opinion of the Supreme Court in the Procter & Gamble case?

Mr. WALTER. Yes.

Mr. HOWLAND. Give us a reference to the case.

Mr. WALTER. It was decided on June 7 last past, and I will get the full text of that decision and leave it with the stenographer, so it can be copied into the hearings if that is desired.

Mr. HOWLAND. All right.

Mr. WALTER. I have a copy with me.

Said decision follows:

[Supreme Court of the United States. No. 780.—October term, 1911. The Procter & Gamble Co., appellant, *v.* The United States of America, the Interstate Commerce Commission, the Cincinnati, Hamilton & Dayton Railway Co., et al., appellees. Appeal from the United States Commerce Court.]

[June 7, 1912.]

Mr. Chief Justice WHITE delivered the opinion of the court.

Having three manufacturing plants, one at Ivorydale, Ohio, a second at Port Ivory, N. Y., and a third at Kansas City, Kans., in which they carried on the business of refining cottonseed and other oils and of manufacturing soap and other products from grease and oil, the Proctor & Gamble Co., to facilitate the transportation to their factories of the substances required for their operation and of shipping out the finished products, became the owners of about 500 railroad tank cars. The cars were exclusively devoted to the business of the company in the following manner: On the property of the company in the yards about their factories there were railroad tracks belonging to the company which served for holding empty or loaded cars, the cars thus situated being held for storage and for movement from place to place as business required. At each of the factories there was also an interchange track connected with the tracks in the yards and with the tracks of the railroad company or companies through whom the business of shipping in interstate commerce to and from the factories was carried on. The movement of cars to the interchange tracks for outward shipment and from the interchange tracks when they were left there by railroad companies was at two of the factories carried on by the company through its own employees and motive power. At the other one this work was done by a railroad company, who made an independent and special charge for the service. The transportation of the private tank cars of the corporation by the railroad companies was governed by established rules, and the price paid to the railroads for transporting the commodities of the company in its private cars was the regular price fixed for such commodities in the established tariffs. The railroads, however, paid to the company for the use of its private cars a fixed sum per mile, this payment being also stated in the regular established tariffs in compliance with law. A portion of the carrier's rule (rule 29) relating to the subject of compensation for hauling such private tank cars is in the margin.[1]

[1] Rule 29. (Sec. 1.) In providing ratings in this classification for articles in tank cars the carriers whose tariffs are governed by this classification do not assume any obligation to furnish tank cars in cases where they do not own or have not made arrangements for supplying such equipment. When tank cars are furnished by shippers or owners, mileage at the rate of three-quarters of 1 cent per mile will be allowed for the use of such tank cars, loaded or empty, provided the cars are properly equipped. No mileage will be allowed on cars switched at terminals nor for movement of cars under empty freight-car tariffs.

In 1910 among others the railroads engaged in transporting tank cars from the plants of the Procter & Gamble Co. adopted a system of rules governing the payment of demurrage by shippers. The provisions of these rules pertinent to this case are excerpted in the margin.[1]

The rules in question were prepared by a committee of the National Association of Railroad Commissioners, composed of a representative from each State having a railroad commission, and a member of the Interstate Commerce Commission, and were adopted in convention by the national association and were subsequently approved by the Interstate Commerce Commission, although putting them in force was not imperatively prescribed by that body.

The Procter & Gamble Co., dissatisfied with the regulations concerning demurrage, in so far as they imposed in certain respects charges upon its tank cars, filed a complaint with the Interstate Commerce Commission charging the rules to be repugnant to the act to regulate commerce because unjust and oppressive and because to enforce them would create preferences and discriminations forbidden by the act. After hearing, the commission made a report declaring that the rules complained of were in no sense in conflict with the act to regulate commerce and, on the contrary, conformed to that act and tended to prevent and repress unlawful preferences and discriminations. An award of relief was therefore denied. In February, 1911, the Procter & Gamble Co. filed a petition in the Commerce Court of the United States, making defendants the United States, the Interstate Commerce Commission, and the railroads who had been complained of in the proceedings before the commission. The petition recited the facts stated above as to the character of the business of the petitioner, the ownership of tank cars, etc., the establishment of the rules for demurrage, their repugnancy to the act to regulate commerce, the injury which had resulted from being compelled to pay the charges for demurrage in accordance with the rules, the application made to the commission, and the refusal of that body to award relief. The conception upon which the petition was based is shown in the excerpt in the margin,[2] wherein it was also charged that the order of the commission dismissing the complaint as above set forth "is null and void and beyond the power of said Interstate Commission in that it sustains the validity of * * * said demurrage rules."

The prayer was as follows:

"Wherefore complainant prays that the aforesaid order of said Interstate Commerce Commission made in said cause No. 3208 on November 14, 1910, be set aside and annulled, and that the defendant railway companies, and each of them, be enjoined from collecting or attempting to collect any demurrage charges upon complainant's loaded tank cars after said cars have been delivered to complainant and placed upon tracks owned or controlled by it; and, further, that said defendant railway companies and each of them be required to repay to complainant herein all sums found to have been wrongfully collected by them, or any of them, under the rule here complained of, and that complainant be granted such other and further relief as it may be entitled to in the premises."

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[1] RULE I. *Cars subject to rules.*—Cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose, are subject to these demurrage rules, except as follows:

(*a*) Cars loaded with live stock.

(*b*) Empty cars placed for loading coal at mines or mine sidings, or coke at coke ovens.

(*c*) Empty private cars stored on carrier's or private tracks, provided such cars have not been placed or tendered for loading on the order of a shipper.

NOTE.—Private cars while in railroad service, whether on carrier's or private tracks, are subject to these demurrage rules to the same extent as cars of railroad ownership.

(Empty private cars are in railroad service from the time they are placed by the carriers for loading or tendered for loading on the orders of a shipper. Private cars under lading are in railroad service until the lading is removed and cars are regularly released. Cars which belong to an industry performing its own switching service are in railroad service from the time they are placed by the industry upon designated interchange tracks and thereby tendered to the carrier for movement. If such cars are subsequently returned empty, they are out of service when withdrawn by the industry from the interchange; if returned under load, railroad service is not at an end until the lading is duly removed.)

[2] Complainant avers that said order of said Interstate Commerce Commission in dismissing its complaint as above set forth is null and void and beyond the power of said Interstate Commerce Commission in that it sustains the validity of Rule I of said demurrage; that said Rule I, in so far as it provides that privately owned cars under lading on private tracks are in railroad service and subject to the demurrage charges imposed by said tariffs until the lading is removed, is unjust and unreasonable in that it deprives complainant of the right to use its said private cars upon private tracks for its own purposes without paying the defendant railway companies demurrage charges therefor after said private cars have been delivered to complainant and have actually ceased to be engaged in railroad service; that the charges exacted by the defendant railway companies of complainant under said provision of said rule permit said defendants to take complainant's property without compensation and deprive it of its property without due process of law in violation of the Constitution of the United States, and particularly of Article V in amendment thereof, and that said provision of said rule is in violation of the said act to regulate commerce, and particularly of sections 1 and 15 thereof as amended June 29, 1906; that said defendants are now exacting such demurrage charges under the provisions of said rule and will continue to do so unless the said order of said Interstate Commerce Commission is set aside and annulled by this court and defendant railway companies are enjoined from enforcing the provisions of said rule.

The railroads answered the bill. The United States and the Interstate Commerce Commission appearing for the purpose, challenged the jurisdiction of the court to entertain the cause and moved to dismiss upon this general ground: "Because the order of the Interstate Commerce Commission complained of directed no affirmative relief and the negative order of the commission dismissing the complaint affords no ground for an action in this court"; and upon the following more detailed specifications filed on behalf of the United States:

"(*a*) It prays that the order of the Interstate Commerce Commission be enjoined, when said order directed no action against any party and therefore the same is not subject either to enforcement or to injunction.

"(*b*) It prays that the defendant common carriers, who are not proper parties to this proceeding except on their own motion, be enjoined from collecting the demurrage mentioned, when no order inhibiting the same has been made by the Interstate Commerce Commission, and in the absence of such an order this court has no power to grant such relief.

"(*c*) It prays that the defendant common carriers be required to repay to complainant all sums heretofore wrongfully collected as demurrage, when this court has no power or jurisdiction to grant such relief, either with or without an order of the Interstate Commerce Commission directing such repayment."

The court, declining at the threshold to consider the demurrers and motion to dismiss, postponed their consideration until the hearing on the merits. There was a consent by all the defendants except the United States and the Interstate Commerce Commission that the case be heard upon the evidence and documents introduced before the commission and the report of that body. The United States and the Interstate Commerce Commission, however, on the overruling of its demurrer and a refusal to grant its motion to dismiss, elected to stand thereon and declined to plead further.

In disposing of the case the court considered it in a twofold aspect—first, as to its jurisdiction and, second, as to the merits of the case. On the first subject it held (*a*) that it had jurisdiction of the cause, and that the refusal of the Interstate Commerce Commission to afford relief to the Procter & Gamble Co. was, for the purposes of jurisdiction of the court, the exact equivalent of an order of the commission granting affirmative relief, and (*b*) as a corollary of this power it was further decided that there was jurisdiction to award pecuniary relief for demurrage if any was illegally exacted. On the merits, however, it was decided that the Interstate Commerce Commission had rightfully refused to grant relief and that there was no foundation for the contention that the property of the company in its private tank cars was taken without due process of law by the demurrage regulations. On this subject it was declared that as the company had accepted the provisions of the published tariffs concerning the use of the tank cars, therefore those cars were submitted to the regulations which the carriers had lawfully established. In other words, the court concluded that because the company had availed of the proffer of the railroads to use the cars in transportation and pay for their use a stated sum the company had acquired no right to disregard restrictions against preferences and discriminations embodied in the act to regulate commerce.

The case was then brought here by the appeal of the Procter & Gamble Co. That company insists that the court below erred in not awarding the relief which was asked and in dismissing the petition. On the other hand, the Interstate Commerce Commission and the railroads insist that the court was right in refusing relief and dismissing the bill. Before we can come, if at all, to consider the merits, however, it is necessary to dispose of the question concerning the jurisdiction of the court below to entertain the petition, because the United States insists at bar, as it did in the lower court, that the court erred in overruling the demurrer to the jurisdiction and refusing to dismiss the cause for want of jurisdiction.

The provisions of the act to establish the Commerce Court fixing the jurisdiction of that court are stated in the first section of the act of June 18, 1910, now section 207 of the judiciary act of March 3, 1911 (36 Stat., 1148). And in view of the necessity of having the provisions of the section immediately in mind we reproduce them. They are as follows:

"SEC. 207. The Commerce Court shall have the jurisdiction possessed by circuit courts of the United States and the judges thereof immediately prior to June 18, 1910, over all cases of the following kinds:

"First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

"Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

"Third. Such cases as by section 3 of the act entitled 'An act to further regulate commerce with foreign nations and among the States,' approved February 19, 1903, are authorized to be maintained in a circuit court of the United States.

"Fourth. All such mandamus proceedings as under the provisions of section 20 or section 23 of the act entitled 'An act to regulate commerce,' approved February 4, 1887, as amended, are authorized to be maintained in a circuit court of the United States.

"Nothing contained in this chapter shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof that is hereby transferred to and vested in the Commerce Court.

"The jurisdiction of the Commerce Court over cases of the foregoing classes shall be exclusive; but this chapter shall not affect the jurisdiction possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes."

The question to be decided is this: Does the authority with which the Commerce Court is clothed in virtue of these provisions invest that body with jurisdiction to redress complaints based exclusively upon the conception that the Interstate Commerce Commission, in a matter submitted to its judgment and within its competency to consider, has mistakenly refused, upon the ground that no right to the relief claimed was given by the act to regulate commerce, to award the relief which was claimed at its hands? In other words, the important question is, Is the authority of the Commerce Court confined to enforcing or restraining, as the case may require, affirmative orders of the commission, or has it the power to exert its own judgment by originally interpreting the administrative features of the act to regulate commerce and upon that assumption treat a refusal of the commission to grant relief as an affirmative order and accordingly pass on its correctness?

Turning for the elucidation of the question to the jurisdictional provisions, it is plain that although all of the four numbered subdivisions composing the section may serve to throw light upon the issue for decision the solution of the question must intrinsically be found in a correct interpretation of the second subdivision. We say this because clearly the first deals alone with cases for the enforcement of orders of the commission as therein described; the third deals only with cases brought under the act of February 13, 1910, which is wholly foreign to the subject here reviewed, since the act referred to relates only to proceedings to enjoin either discriminations or departures by carriers from their published rates; and the fourth refers exclusively to the right to mandamus conformably to section 20 or 23 of the act to regulate commerce, which sections are concerned with the performance of certain duties imposed upon carriers by the act to regulate commerce. The words of this second subdivision are: "Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission."

Giving to these words their natural significance, we think it follows that they confer jurisdiction only to entertain complaints as to affirmative orders of the commission; that is, they give the court the right to take cognizance when properly made of complaints concerning the legality of orders rendered by the commission and confer power to relieve parties in whole or in part from the duty of obedience to orders which are found to be illegal. No resort to exposition can add to the cogency with which the conclusion stated is compelled by the plain meaning of the words themselves. But if it be conceded for the sake of argument that the language of the provision is ambiguous, a consideration of the context of the act will at once clarify the subject. Thus, the first subdivision provides for the enforcement of orders—that is, the compelling of the doing or abstaining from doing of acts embraced by a previous affirmative command of the commission—and the second (the one with which we are concerned), dealing with the same subject from a reverse point of view, provides for the contingency of a complaint made to the court by one seeking to prevent the enforcement of orders of the commission, such as are contemplated by the first paragraph. In other words, by the cooperation of the two paragraphs authority is given, on the one hand, to enforce compliance with the orders of the commission if lawful, and, on the other hand, power is conferred to stay the enforcement of an illegal order. The other provisions of the act are equally convincing. Thus, section 3 (208) provides that the mere pendency of a suit to enjoin, set aside, annul, or suspend an order of the commission "shall not stay or suspend the operation of such order" but confers upon the court the power, under circumstances stated, to restrain or suspend in whole or in part the operation of an order. The same section, moreover, causes the meaning of the provision, if possible, to become clearer by making a finding that irreparable injury will result from the operation of an order sought to be enforced, essential to the granting of an order or injunction restraining or suspending its enforcement.

We might well be content to rest our conclusion upon the considerations just stated. In view, however, of the importance of the subject we do not do so, but shall consider

the matter in a broader aspect for the purpose of demonstrating that to give to the statute a meaning contrary to that which we have found results from its text and therefore to recognize the existence in the court below of the power which it deemed it possessed would result in frustrating the legislative public policy which led to the adoption of the act to regulate commerce, would render impossible a resort to the remedies which the statute was enacted to afford, would multiply the evils which the act to regulate commerce was adopted to prevent, and thus bring about disaster by creating confusion and conflict where clearness and unity of action was contemplated. It can not be disputed that the act creating the Commerce Court was intended to be but a part of the existing system for the regulation of interstate commerce, which was established by virtue of the original adoption in 1887 of the act to regulate commerce, and which was expanded by the repeated amendments of that act which followed, developed in practical execution by the rulings of the body (Interstate Commerce Commission), upon whom was cast the administrative enforcement of the act, the whole elucidated and sanctioned by a long line of decisions of this court. That in adopting the provision concerning the Commerce Court and making it part of the system it was not intended to destroy the existing machinery or method of regulation but to cause it to be more efficient by affording a more harmonious means for securing the judicial enforcement of the act to regulate commerce is certain. The act creating the Commerce Court was entitled "An act to create the Commerce Court, and to amend the act entitled 'An act to regulate commerce,' approved February 4, 1887, as heretofore amended, and for other purposes." The first six sections, which called into being the Commerce Court and defined its powers, all demonstrate the purpose as above stated—that is, to adjust the powers and duties of the newly created court in such manner as to cause them to accord with the system of regulation provided by the act to regulate commerce as it then existed.

What was then the existing system and the functions which the new court was created to perform will be conclusively shown by a brief outline of the scope and purpose of the system which arose from the enactment of the act to regulate commerce (act Feb. 4, 1887, ch. 104, 24 Stat. 379), and its development. By that act as originally enacted many regulations and consequent duties were imposed upon carriers in the interest of the public and of shippers which did not theretofore exist, and various administrative safeguards were formulated, all of which, in their very essence, required, first, for their compulsory emforcement the exercise of official functions of in administrative nature, and, second, for their harmonious development an official unity of action which could only be brought about by a single administrative initiative and primary control. To that end the act (sec. 11) created an administrative body endowed with what may be in some respects qualified as quasi judicial attributes, to whom was confided the enforcement of those provisions of the act which essentially exacted unity in order that they might beneficially operate. And for the purposes stated to the body thus created was committed the trust of enforcing the act in the respect stated, of determining, limited as to the subject matter to which we have referred, whether the provisions of the act had been violated, and, if so, of primarily enforcing the act by awarding appropriate relief. The statute therefore necessarily, while it created new rights in favor of shippers, in order to make those rights fruitful as to the subjects with which the statute dealt coming within the scope of the administrative unity which we have mentioned, primarily made the judgment of the administrative body to whom the statute confided the enforcement of the act in the respects stated a prerequisite to a resort to the courts. In other words, as to the subjects stated the act did not give to the courts power to hear the complaint of a party concerning a violation of the act, but only conferred power to give effect to such complaints when, by previous submission to the commission, they had been sanctioned by a command of that body.

In the long interval which intervened between 1887, when the act to regulate commerce was enacted, and June 18, 1910, when the Commerce Court act was passed, we have learned of no instance where it was held or even seriously asserted that as to subjects which in their nature were administrative and within the competency of the commission to decide, there was power in a court, by an exercise of original action, to enforce its conceptions as to the meaning of the act to regulate commerce by dealing directly with the subject irrespective of any prior affimative command or action by the Interstate Commerce Commission. On the contrary, by a long line of decisions, whereby applications to enforce orders of the commission were considered and disposed of, or where requests to restrain the enforcement of such orders were passed upon, it appears by the reasoning indulged in that it was never considered that there was power in the courts as an original question without previous affirmative action by the commission to deal with what might be termed in a broad sense the administrative features of the act to regulate commerce by determining as an original question that there had

been a compliance or noncompliance with the provisions of the act. The subject is illustrated and made clear by the rulings in State of Washington, ex rel. Oregon Railroad & Navigation Co. *v.* H. A. Fairchild et al. (224 U. S. ——); Robinson *v.* Balto. & Ohio R. R. (222 U. S., 506); Southern Railway Co. *v.* Reid (222 U. S., 424), and Texas & Pacific Ry. *v.* Abilene Cotton Oil Co. (204 U. S., 426). The latter case especially will serve to point out that where the power of original action by a court without previous action of the commission was insisted upon, it was based upon the conception that the particular subject matter as to which such power was asserted was by the express terms of the act to regulate commerce not embraced within the subjects primarily confided by the act exclusively to the administrative authority of the commission.

Originally the duty of the courts to determine whether an order of the commission should or not be enforced carried with it the obligation to consider both the facts and the law. But it had come to pass prior to the passage of the act creating the Commerce Court that in considering the subject of orders of the commission, for the purpose of enforcing or restraining their enforcement, the courts were confined by statutory operation to determining whether there had been violations of the Constitution, a want of conformity to statutory authority, or of ascertaining whether power had been so arbitrarily exercised as virtually to transcend the authority conferred although it may be not technically doing so. (Int. Com. Comm. *v.* Union Pacific R. R., 222 U. S., 541, 547; Int. Com. Comm. *v.* Ill. Cent. R. R., 215 U. S., 452.) So also at the time the law creating the Commerce Court was passed, suits to compel obedience to orders of the commission or to restrain an enforcement of such orders were required to be brought in the Circuit Court of the United States in the district where a carrier or one or two or more carriers to whom the order was directed had its principal operating office.

In view of the provisions of the act to regulate commerce just referred to as originally enacted, of the legislative evolution of that act, its uniform practical enforcement and the constant judicial interpretation which we have thus briefly indicated, it is impossible, we think, in reason, to give to the act creating the Commerce Court the meaning affixed to it by the court below, since to do so would be virtually to overthrow the entire system which had arisen from the adoption and enforcement of the act to regulate commerce. First, because as the previous ascertainment by the commission on complaint made to it as to whether violations of the act had been committed, with reference to the subjects as to which previous action was required, was an essential prerequisite to a right to complain in a court, the interpretation given below would, by destroying the necessity for the prerequisite, action of the commission, operate to create a vast body of rights which had no existence at the time the Commerce Court act was passed. Second, because the recognition of a right in a court to assert the power now claimed would of necessity amount to a substitution of the court for the commission or at all events would be to create a divided authority on a matter where from the beginning primary singleness of action and unity was deemed to be imperative. Third, because the result of the interpretation would be to bring about the contradiction and the confusion which it had been the inflexible purpose of the lawmaker from the beginning to guard against, an interpretation which would seemingly create rights hitherto nonexistent and yet at once proceed to destroy such rights by bringing about a confusion which would render the rights which the act creates practically valueless. Indeed, these inevitable results of the interpretation given by the court below to the act would necessarily amount to declaring that Congress in seeking to unify and perfect the administrative machinery of the act to regulate commerce and to make more beneficial its operation had overthrown the whole fabric of the system as previously existing.

The demonstration of the error of the construction adopted below is so additionally made manifest by a consideration of the general structure and the text of the act creating the Commerce Court that, in connection with the legislative history which we have previously stated, we advert to that point of view:

A. The first section of the act wherein is recited the jurisdiction of the Commerce Court which we have previously commented upon makes clear that the purpose was not to create a court with new and strange powers destructive of the previous well-established administrative authority of the Interstate Commerce Commission and in conflict with the general jurisdiction vested in the courts of the United States, but only to give to the new court the special jurisdiction then possessed by the courts of the United States for the enforcement of orders made by the commission, and thus to unify the exertion of judicial power with reference to the enforcement of the orders of the commission. The opening words of the section which make this result clear are as follows: It (the Commerce Court) shall "have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds: * * *"

B. Because the enumeration as to the subject matters of jurisdiction conferred which follows the words just quoted, which enumeration we have previously reproduced and

commented upon, conforms to the existing law and evidently assumes its continued operation.

C. Because the sedulous effort of Congress while creating the new machinery not to destroy the existing system finds expression in a two-fold way: (1) by the declaration that nothing in the fact that the existing power of the circuit courts as to the subjects of jurisdiction transferred to the new court should be deemed as an enlarging of those powers, and (2) by the provision that nothing in the transfer of the enumerated powers to the Commerce Court should be considered as limiting or abridging the existing jurisdiction possessed by the circuit courts as to things and subject matters not embraced in the powers transferred, thus the two provisos again serving to make clear the legislative intent that the creation of a new body to exercise a portion of the existing judicial power should not in any way enlarge the power as existing or be implied as destroying or minimizing the general scope of the judicial power possessed by the circuit courts where such power was not embraced within the authority transferred to the new body.

D. Because the act which created the court contained in its latter sections provisions amending sections of the act to regulate commerce which when rightly interpreted were manifestly adopted to make that act more consistent with the new situation resulting from the creation of the new court and utterly inconsistent with the conception that that court had power not previously possessed by any court and the existence of which would serve to set at naught the whole system of interstate-commerce regulation.

Some suggestion is made in argument concerning the alleged claim of constitutional right asserted in the petition filed below and which the court disposed of in the manner we have stated. But what we have said suffices to point out the fallacy which the contention involves, for the following reasons: If the claim of constitutional right concerned a subject which from its very nature and effect dominated the act to regulate commerce and therefore was wholly independent of all questions of right or remedy created by or depending upon that statute, then the issue presented a controversy not cognizable in the Commerce Court, as it could not so be without violating the express reservation and restriction as to the general power of the circuit courts which we have just quoted. If, on the other hand, the constitutional question was involved in or depended upon the provisions of the act to regulate commerce that question in the nature of things was subject to the precedent action of the commission on the subjects committed to it by the act to regulate commerce and as to which the court had jurisdiction alone to act in virtue of a prior affirmative order of the commission.

The general considerations which we have stated establish the error committed by the court below in holding that it had jurisdiction over the claim of the Proctor & Gamble Co. to recover on a money demand based on the illegality of the demurrage charges alleged to have been wrongfully exacted by the railroad companies. Through abundance of precaution, we, however, say that wholly irrespective of the general considerations stated we think the conclusion of the court as to its possession of jurisdiction over the subject referred to was clearly repugnant in other respects to the express terms of the act.

As it follows from what we have said that the court below erred in taking jurisdiction of the petition, it results that our duty is to remand the cause to the court below with directions to dismiss the petition for want of jurisdiction.

And it is so ordered.

The decision of the United States Commerce Court in the case of the Procter & Gamble Co., petitioners, *v.* United States et al., respondents, Interstate Commerce Commission, intervening respondent, is set out below:

[United States Commerce Court. No. 9—May Session, 1911. The Procter & Gamble Co., petitioners, *v.* United States et al., respondents; Interstate Commerce Commission, intervening respondent. On final hearing.]

For opinion of Interstate Commerce Commission, see Interstate Commerce Commission Report, 556.

Mr. George H. Warrington, for the petitioner.

Mr. James A. Fowler, Assistant to the Attorney General, and Mr. Blackburn Esterline, special assistant to the Attorney General, for the United States.

Mr. P. J. Farrell, for the Interstate Commerce Commission.

Mr. Edward Barton, with whom Mr. M. R. Waite was on the brief, and Mr. R. Walton Moore, for the respondent carriers.

Before KNAPP, Presiding Judge, and ARCHBALD, HUNT, CARLAND, and MACK, Judges.

[July 20, 1911.]

ARCHBALD, *Judge:*

The Procter & Gamble Co., the petitioner, is engaged in the manufacture of soap and the refining of cottonseed and other oils, and owns large industrial establishments at Ivorydale, Ohio, Port Ivory, N. Y., and Kansas City, Kans. In all its plants it has and maintains private railroad tracks for the purpose of receiving cars from the interchange tracks which connect it with the respondent railroads. At two of the places named it owns and employs its own locomotives and itself performs the entire switching of cars, and at the other the switching is performed by the railroads under contract, which is paid for separate and apart from the transportation charges. In every instance the tracks are owned by the company, are on its own land, and the railroads have no interest or control over them.

The Procter & Gamble Co. is also the owner of 532 oil-tank cars, which it has purchased at a cost of about $500,000. These cars are necessary for the transportation of the oils, grease, and other like commodities used by the company in its business and were purchased by it in relief of the railroads, which were and are not prepared to furnish them. These tank cars, when loaded by the petitioner at its several establishments, are tendered to the connecting railroads for shipment and are hauled to their various destinations at the regular published rates for the respective commodities with which they are loaded. The use of these cars is confined to the petitioner's business, and in consideration of the petitioner's furnishing them an allowance is made by the railroads of three-quarters of a cent a mile per car for each mile that it is hauled, this allowance being in accordance with the published tariffs of the railroads with respect to the movement of all private tank cars.

Until the adoption of the rule set forth below, no demurrage was ever charged by any of the respondent railroads for delay in unloading private tank cars while standing on the private tracks of the owner. But beginning in February, 1910, and following that, the railroads have published, as part of their so-called "uniform demurrage code," the following rule, which is the subject of this controversy:

"Private cars while in railroad service, whether on the carrier's or private tracks, are subject to these demurrage rules to the same extent as cars of railroad ownership.

"Empty private cars are in railroad service from the time they are placed by the carrier for loading or tendered for loading on the orders of the shipper.

"Private cars under lading are in railroad service until the lading is removed and the cars are regularly released.

"Cars which belong to an industry performing its own switching service are in railroad service from the time they are placed by the industry upon designated interchange tracks, and thereby tendered to the carrier for movement. If such cars are subsequently returned empty, they are out of service when withdrawn by the industry from the interchange; if returned under load, railroad service is not at an end until the lading is duly removed."

The demurrage rules, of which this is a part, were prepared by a committee of the National Association of Railway Commissioners, composed of a representative from each State having a railroad commission and a member of the Interstate Commerce Commission; and were adopted by the association in convention and later approved, although not prescribed, by the Interstate Commerce Commission.

After the publication of the rule in controversy, but before it had gone into effect, the Procter & Gamble Co. made complaint to the Interstate Commerce Commission, and sought to have the rule set aside, in so far as it permitted the railroads to make a demurrage charge against the private cars of the company after they had been delivered to it and were standing on its own private tracks. But after a due hearing the commission dismissed the complaint, and the respondent railroads are now exacting demurrage charges in accordance with the provisions of the rule.

The proceedings in this court are brought to set aside the order of the commission dismissing the complaint and refusing relief, the allegation being made that the rule, in so far as it provides that privately owned cars under lading on private tracks are in railroad service, and so subject to a demurrage charge until the lading is removed, is unjust and unreasonable and deprives the company of the right to use its private cars on its private tracks for its own purposes unless demurrage is paid therefor, thereby permitting the respondent railroads to deprive the company of its property without due process of law, in violation of the fifth amendment to the Constitution and the acts regulating interstate commerce. The prayer of the petition is that the order of the commission dismissing the complaint may be annulled and the respondent railroads enjoined from collecting the demurrage charge, and that they may be further required to repay to the petitioner the sums which they have wrongfully collected from it under the rule.

The United States moves to dismiss the petition on the ground that this court has no jurisdiction in the premises; or that, if it has, no cause of action is made out which entitles the petitioner to relief.. And in this motion the Interstate Commerce Commission and the several railroads which have been summoned as respondents, join.

The jurisdiction of this court is denied on the ground that the petitioner is a shipper, and the Interstate Commerce Commission having merely dismissed the complaint which was made to it, and granted no affirmative relief, that there is nothing in the order of dismissal which it entered that affords any basis for action here. Or, in other words, that it is only the carrier against which an order is made in favor of the shipper that can bring the case for review into this court, the shipper being concluded by the action of the commission, whatever it may chance to be. This is a serious question, which merits careful consideration and is not altogether easy to solve.

By the act by which the Commerce Court was created (act June 18, 1910; 36 Stat., 539) it was given "the jurisdiction now possessed by circuit courts of the United States and the judges thereof" of, inter alia, "cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." It was also therein further provided that "in all cases within its jurisdiction the Commerce Court and each of the judges assigned thereto shall respectively have and may exercise any and all the powers of a circuit court of the United States, and of the judges of said court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred;" and, conversely, that nothing in the act should be construed as enlarging the jurisdiction at the time possessed by said circuit courts, or the judges thereof, thereby transferred to and vested in the Commerce Court; the jurisdiction, however, so far as conferred, to be exclusive, and so far as not conferred being reserved. The question, then, is whether upon any recognized ground of equity practice the present petitioner, under the law as it previously stood, would have had the right to apply by bill to a circuit court of the United States to set aside the action of the Interstate Commerce Commission dismissing its complaint, and to enjoin the enforcement by the railroads of the demurrage charge which in effect was thereby approved.

It is of no significance in this connection, nor of any assistance in the solution of the question, that suits in this court to enjoin, set aside, annul, or suspend any order of the commission are required to be brought against the United States. It is just as consistent that the United States should be the respondent in cases brought for this purpose by the shipper as in cases brought by the carrier, the Government in each case standing for the order of the commission which it is thus appointed to justify and defend.

Neither does it detract from the jurisdiction of this court that, under the law as it previously stood, the venue of suits brought in the circuit courts of the United States against the commission to set aside its orders was fixed in each case in the district where the carrier against which the order was made had its principal operating office, jurisdiction to hear and determine such suits being in terms vested in the courts of such district. (Act June 29, 1906, sec. 16, 34 Stat., 592.) This was a favor to the carrier adversely affected by the order. And according to the law at the time, the commission being the respondent, provision had to be made for jurisdiction over it by the courts of the various districts throughout the country where it was liable to be summoned. It was to meet this situation that jurisdiction was given in terms over suits of the character mentioned to the courts of the district where the carrier against which the order was made had its principal office. Nothing more was intended, and nothing more is to be made out of this provision of the law. Certainly nothing adverse to possible suits by others than the carrier is to be thereby implied.

The real argument against the right of suit, where the complaint of a shipper has been dismissed, is that the denial of relief by the commission is not an order of which the courts can lay hold. Such an order, it is urged, must be one specifically requiring that something shall or shall not be done before this is the case. In Peavey *v.* Union Pacific Railroad (176 Fed., 409) it is said;

"A careful search of the interstate commerce act discloses no limitation of the parties who may maintain suits to enjoin, set aside, annul, or suspend an order of the commission, to those who were parties to the proceedings before it, upon which the order was based. The proceeding in court is not an appeal; it is a plenary suit in equity. * * * The determination of the question, what parties may maintain such suits is left by the * * * act to the general rules and practice in equity, and under them any party whose rights or property are in danger of irreparable injury from an unauthorized order of the commission may appeal to a Federal court of equity for relief."

But there was an order of the commission in that case which prohibited the railroad from paying to complainants, and others who were owners of elevators located upon

their lines, any compensation for the elevation of grain in transit, so that the law was unquestionably met so far as there being an order is concerned; and the case therefore decided nothing more than that the right to resort to the courts is not confined to the carrier, but extends to everyone injuriously affected by the order of the commission, even though not a party to the proceedings before it in which the order was made. To that extent, but no further, it is pertinent here. Putting aside, however, for the moment the provisions of the statute, and considering the case as though it had not been passed, it is clear that a shipper would have been entitled, in one form or another, to redress in court against an unjust and unlawful charge or practice imposed by a carrier, such as the one here is alleged to be.

And it would have been permissible therefore for the Procter & Gamble Co., denying the right of the carrier to make this demurrage charge, to have refused to pay it and compel the carriers to bring suit therefor; or, in view of the complications to which this would give rise, to say nothing of the multiplicity of suits with different carriers which would be likely to ensue, and in order to settle the matter as to all parties once for all, it would have had the undoubted right to go into a court of equity by bill and have the legality of the practice tested, and, if found to be unjustified, enjoined. (Donovan *v.* Pennsylvania Co., 199 U. S., 279.) Indeed, the only question would seem to be whether this was not the course which the company, even considering the provisions of the statute, was required to pursue, the legality of the demurrage charge being the only thing involved, and that being a matter for the courts and not for the commission to decide. (Hite *v.* Central Railroad of New Jersey, 171 Fed., 370. See also Danciger *v.* Wells, Fargo & Co., 154 Fed., 379, and Langdon *v.* Pennsylvania R. R., 186 Fed., 237.) It was decided, however, in Texas & Pacific Railway Co. *v.* Abilene Cotton Oil Co. (204 U. S., 426) that redress by a carrier against an unjust and unreasonable rate must be sought in the first instance by proceedings before the commission, and that only after that could an action be maintained against the carrier for reparation based on the result.

This conclusion was reached, and the common-law right of action otherwise existing held to be abrogated by implication, in view of the system established by the enactments with regard to rate regulation by the Interstate Commerce Commission, and as necessary to the efficiency of that system, which otherwise would be subverted and made nugatory. And this was repeated in Baltimore & Ohio Railroad *v.* Pitcairn Coal Co. (215 U. S., 481), where it was held that, for the correction of an unequal distribution of cars, a shipper was similarly required to go to the commission, and could not in advance of its action seek to remedy by mandamus the discrimination alleged. And Morrisdale Coal Co. *v.* Pennsylvania Railroad (183 Fed., 929) also is to the same effect. But if that be so, there can be no serious question as to the propriety, if not the necessity, for the present petitioner going first to the commission to have determined whether the demurrage charge in controversy was a just and reasonable requirement. And it can not be that the implication by which this is brought about is to be carried so far as to make the action of the commission conclusive where relief is denied. There is no such compelling necessity in order to save the system; nor is the statute to be construed as requiring exclusive resort to a tribunal where the rights of the party can be only partially determined at the sacrifice of other rights which the courts of the land are appointed to consider and defend.

This is not to deny that in questions of fact, or where judgment or expediency is involved, the action of the commission in denying relief, the same as in granting it, may not be final. But where, as here, it is not the amount that is in dispute—$1 a day per car being recognized as reasonable if there is to be any charge—but the right of the carrier, under the circumstances, to make any charge at all, it is not to be implied, unless there is no escape from it, that the decision of the commission adverse to the shipper is to foreclose the question. And while the dismissal of a complaint by the commission in a case like the present one may not in strictness be an order, in that it does not require or prohibit that anything shall or shall not be done, it is so in substance and effect, in that, by refusing to interfere with the practice or the charge complained of, it virtually approves it and makes it operative. If it was required by the act to hold that a court could not interfere with such an order, however confiscatory to the shipper it might be, the shipper being thus without legal redress, the act might well be declared unconstitutional as wanting in due process of law.

The action of the commission, if to be given any force, having thus the effect of an adverse decision with respect to the question involved, must be regarded, even though negative in character, as an order within the meaning of the statute, which the courts may enjoin or set aside if legal or equitable grounds for doing so are found to exist. The petitioner therefore correctly came into this court, as it could previously have gone

into a circuit court of the United States—the requisite amount being involved and the case being one arising under the Federal law—to have the action of the commission dismissing its complaint set aside and the demurrage charge disallowed, if that should be the conclusion reached with regard to it, either by direct decree or by remanding the case to the commission with directions to sustain the complaint.

But while the jurisdiction of this court in the premises is thus sustained, we are forced to conclude, upon a consideration of the merits, that the demurrage charge in controversy was lawfully imposed, and that the petitioner therefore has no just ground for complaint. The argument against the charge proceeds upon a misconception. Baldly put, as an exaction for the use by the shipper of his own cars while standing on his own private tracks, the right to it might well be questioned. Neither is it to be sustained as compensation to the carrier for an additional service not covered by the transportation charge—that is to say, for the storage of the freight with which the cars are loaded—that storage being in the cars and on the tracks of the shipper and not in or on anything which the carrier has supplied. (In re Demurrage on Private Tank Cars, 13 Int. Com. Com. Rep., 378, 381.) It is difficult also to see how the imposition of demurrage on private cars for delay in unloading is necessary to prevent unjust discrimination, the shipper who is able to provide such cars having an advantage over those who can not, which this regulation is supposed to correct.

The ability to own private cars is a mere matter of capital which the undue withholding or the prompt unloading and releasing of them can hardly affect, and the difference in financial circumstances is an advantage which the law can not undertake in this way to overcome. (Peavey *v.* Union Pacific Railroad, 176 Fed., 409, 419.) It may not be consistent, also, with the exaction of this charge that provided only the cars are unloaded within the free time allowed they may be reloaded and retained by the shipper indefinitely without any claim being made for demurrage. If this, which is the practical construction of the rule, is to be accepted as the correct one, it throws serious doubt on its validity, the real ground on which the charge is to be sustained being the right of the carrier to have the cars promptly returned into service, which this has the effect to undo. Nor is the condition of the cars, once they have been delivered to the shipper, whether loaded or unloaded, of any concern to the carrier, except as an end to getting them back into use again. And there is also an apparent inconsistency in holding inbound cars liable to demurrage after they have been delivered and are on the tracks of the owner until they are unloaded, barring the free days, and yet in imposing it on outbound cars without regard to when they are loaded, only from the time they are placed on the interchange tracks. The justification of the rule is therefore to be sought in something outside of all this, upon a determination of the real principle involved.

It is not necessary to decide whether a railroad can refuse or be required to haul private cars. Whatever may be its duty in this regard, it is conceded that such terms may be imposed as a condition to hauling them as have a reasonable relation to the transportation service in which they are employed. And this concession necessarily sustains the present charge. In using these cars, whether as supplementary to or in place of their own, the railroads are entitled to require that there shall be a reasonably dependable supply, and that such cars shall not be withdrawn at will to serve the private purposes of the owners, but shall be kept in active and steady use, and to that end that they shall be put on a footing in this respect with other cars. The interest of the carrier that this should be the case is clear. For the time being these cars become a part of the rolling stock of the road, taking the place of those which the carrier would otherwise be called upon to supply. It may be that there are some kinds of these cars, such as the tank cars here, which the railroads do not keep on hand, but rely on each shipper furnishing his own. But that does not change the principle involved. In one form or another, the carrier is bound to supply the necessary transportation facilities for handling every kind of freight; and this, not to one shipper only, but equally and without discrimination to all. And it is put at a disadvantage and an extra burden upon it imposed if it can not be assured with regard to the supply of cars on which it can depend, but is liable to run short or be in excess according as private cars are released or withheld.

This the demurrage charge which is complained of is calculated to overcome, and therefore may justly be imposed. The purpose of demurrage is to force the cars back into use. Delay is made expensive, so that it may be an object to the shipper which he can not afford to disregard. Its exaction from private cars, the same as others, is therefore neither arbitrary nor unjust.

Nor is it violative of the owner's rights. It is simply a condition to the acceptance of his cars, which, for the reasons given, the carriers have found it necessary to impose, and with which therefore he must expect to comply. Presumably the use of these cars operates to his advantage, or he would not be at the expense of supplying them.

But he can not expect that the advantage shall be all on one side. And it having been found by experience that demurrage on private, the same as on public, cars is a necessary transportation regulation, which is justified on principle, the carriers were within their rights in imposing it by the rule in question, and it must therefore be sustained.

The petition will be dismissed on the merits with costs.

KNAPP, *Presiding Judge*, concurring:

The conclusion reached in this case is undoubtedly correct, and I disagree with the foregoing opinion only so far as it questions the right to enforce the demurrage rule in controversy for the purpose or in aid of preventing undue preference and advantage to the owners of private cars. The commission based its decision in part on this ground and in my judgment was right in so doing.

Thereupon the committee proceeded to the consideration of executive business.

1	$17 823 386	$24 104 428	$23 772 265	$47 757 289	$49 081 481	$2 432 338	$2 460 239
4	3 816 444	4 365 134	4 480 428	9 381 313	9 771 439	600 895	626 242
4	20 801 434	26 707 911	27 632 859	51 874 652	55 411 113	3 195 081	3 402 998
	205.1	174.1	182.8	175.0	188.6	272.4	270.5
	1.580¢	1.542¢	1.559¢	1.643¢	1.608¢	1.028¢	1.034¢
	$3.24	$2.68	$2.85	$2.88	$3.03	$2.80	$2.80
	19.8	21.4	21.6	21.2	21.3	25.1	24.8
	2.36¢	2.52¢	2.36¢	2.45¢	2.24¢	1.69¢	1.69¢
	$0.47	$0.54	$0.51	$0.52	$0.48	$0.43	$0.42
	142.5	58.8	58.3	75.4	78.6	142.6	146.8
	3.09¢	3.57¢	3.47¢	3.42¢	3.25¢	3.20¢	2.77¢
	$4.40	$2.10	$2.02	$2.58	$2.55	$4.56	$4.06
	67.0	39.8	39.7	45.3	46.8	140.5	144.4
	2.96¢	3.28¢	3.17¢	3.17¢	2.99¢	3.19¢	2.76¢
	$1.98	$1.30	$1.26	$1.43	$1.40	$4.48	$3.99
	105.4	131.1	129.0	119.6	122.9	82.2	88.2
	19.3	21.4	20.9	21.6	21.7	15.5	16.2

STERN REGION		CENTRAL WESTERN REGION		SOUTHWESTERN REGION		WESTERN DISTRICT	
	1956	1957	1956	1957	1956	1957	1956
8	44 913	53 673	53 692	27 328	27 441	125 769	126 046
8	22 434	29 780	30 706	15 150	15 269	67 148	68 409
9	18 471 868	28 090 701	27 108 968	16 915 425	17 484 445	77 595 185	63 065 281
1	5 730 384	11 817 301	11 198 982	4 650 846	4 603 852	23 007 976	21 533 218
1	$79 328 146	$176 379 502	$163 643 505	$66 313 335	$64 799 812	$335 744 938	$307 771 463
6	1 838 370	1 717 356	1 637 132	650	856	3 667 272	3 476 360
7	1 517 770	1 614 483	1 791 084	395 310	423 541	3 500 590	3 732 395
3	3 356 140	3 331 839	3 428 216	395 960	424 399	7 167 862	7 208 755
9	39 618 540	32 091 519	30 725 491	6 500	8 580	73 967 408	70 352 611
3	256 734 351	704 001 663	746 584 779	113 552 659	122 910 076	1 063 294 055	1 126 229 206

INTERSTATE COMMERCE COMMISSION
BUREAU OF TRANSPORT ECONOMICS AND STATISTICS

Statement No. M-220 (*OS-D*)

REVENUE TRAFFIC STATISTICS OF CLASS I RAILROADS IN THE UNITED STATES

Compiled from 109 reports of revenue traffic statistics representing 114 railroads

(SWITCHING AND TERMINAL COMPANIES NOT INCLUDED)

FOR SEVEN MONTHS ENDED WITH JULY 1957 AND 1956

ITEM	UNITED STATES		NEW ENGLAND REGION		GREAT LAKES REGION		CENTRAL EASTERN REGION		EASTERN DISTRICT		POCAHONTAS REGION	
	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956
AGGREGATES												
Miles of road operated at close of month:												
1. Freight service #	221 596	222 014	5 867	5 890	22 373	22 447	22 425	22 445	50 665	50 782	7 898	7 893
2. Passenger service #	113 229	116 643	3 417	3 517	11 083	11 189	9 368	9 941	23 868	24 647	4 086	4 133
3. Number of revenue tons carried	1 490 024 648	1 533 814 600	38 122 736	40 667 877	242 791 724	256 223 453	341 489 070	350 764 163	622 403 530	647 655 493	146 211 230	143 325 763
4. Number of revenue tons carried one mile (thous)	362 324 984	369 950 935	5 360 306	5 717 034	47 290 561	50 380 396	60 187 505	61 698 731	112 838 372	117 796 161	40 624 245	37 976 626
5. Freight revenue	$5 205 558 916	$5 130 777 757	$132 172 252	$133 347 447	$774 669 585	$777 735 704	$949 962 861	$923 970 021	$1 856 804 698	$1 635 053 172	$416 948 900	$ 387 015 749
6. Number of revenue passengers carried:												
6-01. Commutation passengers*	143 010 364	145 009 403	22 252 386	22 538 130	26 700 088	27 570 171	53 475 618	54 371 295	102 428 092	104 479 596	46 974	58 309
6-02. All other passengers	99 461 306	106 105 258	12 078 720	12 880 551	13 942 382	15 433 016	44 686 360	47 457 552	70 707 462	75 771 119	2 163 982	2 269 375
6-03. Total	242 471 670	251 114 661	34 331 106	35 418 681	40 642 470	43 003 187	98 161 978	101 828 847	173 135 554	180 250 715	2 210 956	2 327 684
7. Number of revenue passengers carried one mile:												
7-01. Commutation passengers*	2 618 113 521	2 633 220 752	479 939 736	484 440 152	510 516 753	525 026 712	1 131 352 759	1 134 717 704	2 121 809 248	2 144 184 568	1 180 516	1 441 788
7-02. All other passengers	12 681 199 986	13 628 139 891	850 949 145	916 313 735	1 778 796 094	2 039 552 345	2 666 680 118	2 764 591 706	5 296 425 357	5 720 457 786	316 003 125	341 256 971
7-03. Total	15 499 313 507	16 461 360 643	1 330 888 881	1 400 753 887	2 289 312 847	2 564 579 057	3 798 032 877	3 899 309 410	7 418 234 605	7 864 642 354	317 183 641	342 698 759
8. Passenger revenue:												
8-01. Commutation fares*	$65 286 532	$62 034 696	$9 955 724	$8 759 397	$12 454 661	$12 296 512	$28 083 029	$26 883 443	$50 493 414	$47 939 352	$20 244	$24 610
8-02. All other fares	$374 483 127	$379 086 539	$28 761 002	$28 061 184	$60 060 168	$65 013 099	$97 711 352	$95 609 370	$186 532 522	$188 683 653	$9 950 933	$9 775 546
8-03. Total	$439 769 659	$441 121 235	$38 716 726	$36 820 581	$72 514 829	$77 309 611	$125 794 381	$122 492 813	$237 025 936	$236 623 005	$9 971 177	$9 800 156
9. Passenger service train revenue 1/	$695 039 237	$710 878 835	$50 447 779	$48 963 483	$114 902 116	$123 771 630	$169 206 726	$167 126 101	$334 556 621	$339 861 214	$16 881 140	$17 196 769
10. Passenger train-miles	162 131 580	170 871 463	9 539 733	9 890 853	24 833 601	26 532 053	29 637 139	31 908 505	64 010 473	68 331 411	4 266 852	4 391 041
11. Passenger carrying car-miles	851 249 360	915 206 607	44 295 302	45 896 749	125 836 978	140 072 249	183 737 896	194 308 826	353 870 176	380 277 824	22 583 901	23 598 117
AVERAGES												
FREIGHT TRAFFIC:												
12. Miles per revenue ton per road	243.2	241.2	140.6	140.6	194.8	196.6	176.3	175.9	181.3	181.9	277.8	265.0
13. Revenue per ton-mile	1.437¢	1.387¢	2.466¢	2.332¢	1.638¢	1.544¢	1.578¢	1.498¢	1.646¢	1.558¢	1.026¢	1.019¢
14. Revenue per ton per road	$3.49	$3.35	$3.47	$3.28	$3.19	$3.04	$2.78	$2.63	$2.98	$2.83	$2.85	$2.70
COMMUTATION PASSENGER TRAFFIC:*												
15-01. Miles per passenger per road	19.7	19.5	21.6	21.5	19.1	19.0	21.2	20.9	20.7	20.5	25.1	24.7
16-01. Revenue per passenger-mile	2.32¢	2.19¢	2.07¢	1.81¢	2.44¢	2.34¢	2.48¢	2.37¢	2.38¢	2.24¢	1.71¢	1.71¢
17-01. Revenue per passenger per road	$0.46	$0.43	$0.45	$0.39	$0.47	$0.45	$0.53	$0.49	$0.49	$0.46	$0.43	$0.42
ALL OTHER PASSENGER TRAFFIC:												
15-02. Miles per passenger per road	127.5	128.4	70.5	71.1	127.6	132.2	59.7	58.3	74.9	75.5	146.0	150.4
16-02. Revenue per passenger-mile	2.95¢	2.78¢	3.38¢	3.06¢	3.38¢	3.19¢	3.66¢	3.46¢	3.52¢	3.30¢	3.15¢	2.86¢
17-02. Revenue per passenger per road	$3.77	$3.57	$2.38	$2.18	$4.31	$4.21	$2.19	$2.01	$2.64	$2.49	$4.60	$4.31
TOTAL PASSENGER TRAFFIC:												
15-03. Miles per passenger per road	63.9	65.6	38.8	39.5	56.3	59.6	38.7	38.3	42.8	43.6	143.5	147.2
16-03. Revenue per passenger-mile	2.84¢	2.68¢	2.91¢	2.63¢	3.17¢	3.01¢	3.31¢	3.14¢	3.20¢	3.01¢	3.14¢	2.86¢
17-03. Revenue per passenger per road	$1.81	$1.76	$1.13	$1.04	$1.78	$1.80	$1.28	$1.20	$1.37	$1.31	$4.51	$4.21
18. Revenue passenger-miles per train-mile	95.6	96.3	139.5	141.6	92.2	96.7	128.2	122.2	115.9	115.1	74.3	78.0
19. Revenue passenger-miles per car-mile	18.2	18.0	30.0	30.5	18.2	18.3	20.7	20.1	21.0	20.7	14.0	14.5

ITEM	EASTERN DISTRICT INCLUDING POCAHONTAS REGION		SOUTHERN REGION		NORTHWESTERN REGION		CENTRAL WESTERN REGION		SOUTHWESTERN REGION		WESTERN DISTRICT	
	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956
AGGREGATES												
Miles of road operated at close of month:												
1. Freight service #	58 563	58 675	37 214	37 247	44 779	44 921	53 700	53 709	27 340	27 462	125 819	126 092
2. Passenger service #	27 954	28 780	18 102	18 972	22 218	22 570	29 805	30 577	15 150	15 744	67 173	68 891
3. Number of revenue tons carried	768 614 760	790 981 256	258 816 771	273 637 863	165 624 740	157 196 738	184 767 219	190 849 720	112 201 158	121 149 023	462 593 117	469 195 481
4. Number of revenue tons carried one mile (thous)	153 462 617	155 772 787	52 233 040	54 545 325	41 504 304	42 764 491	82 254 339	82 638 542	32 870 684	34 229 790	156 629 327	159 632 823
5. Freight revenue	$2 273 753 598	$2 222 068 921	$738 775 781	$745 064 548	$593 575 349	$577 903 687	$1 151 869 853	$1 126 933 156	$447 584 335	$458 807 445	$2 193 029 537	$2 163 644 288
6. Number of revenue passengers carried:												
6-01. Commutation passengers*	102 475 060	104 537 905	14 685 085	15 153 493	13 153 891	12 984 596	12 689 432	12 326 803	6 890	6 606	25 850 213	25 318 005
6-02. All other passengers	72 871 444	78 040 494	6 824 474	7 236 405	7 907 804	7 944 619	9 559 241	10 371 377	2 298 343	2 512 363	19 765 388	20 628 359
6-03. Total	175 346 510	182 578 399	21 509 559	22 389 898	21 061 695	20 929 215	22 248 673	22 698 180	2 305 233	2 518 969	45 615 601	46 146 364
7. Number of revenue passengers carried one mile:												
7-01. Commutation passengers*	2 122 989 764	2 145 626 356	188 928 826	190 084 610	272 932 725	266 047 482	233 193 306	231 396 244	68 900	66 060	506 194 931	497 509 786
7-02. All other passengers	5 612 428 482	6 061 714 757	1 853 077 446	1 950 237 943	1 129 398 450	1 236 542 200	3 435 992 734	3 671 713 128	650 302 874	707 931 863	5 215 694 058	5 616 187 191
7-03. Total	7 735 418 246	8 207 341 113	2 042 006 272	2 140 322 553	1 402 331 175	1 502 589 682	3 669 186 040	3 903 109 372	650 371 774	707 997 923	5 721 888 989	6 113 696 977
8. Passenger revenue:												
8-01. Commutation fares*	$50 513 658	$47 963 962	$5 022 166	$4 666 275	$5 268 455	$5 128 266	$4 481 307	$4 275 154	$946	$1 039	$9 750 708	$9 404 459
8-02. All other fares	$196 483 455	$198 459 199	$52 888 891	$52 873 555	$26 503 683	$27 485 913	$81 517 251	$82 683 922	$17 089 847	$17 583 950	$125 110 781	$127 753 785
8-03. Total	$246 997 113	$246 423 161	$57 911 057	$57 539 830	$31 772 138	$32 614 179	$85 998 558	$86 959 076	$17 090 793	$17 584 989	$134 861 489	$137 158 244
9. Passenger service train revenue 1/	$351 437 761	$357 057 983	$96 256 961	$98 517 538	$58 926 985	$61 149 322	$151 744 015	$156 344 990	$36 673 515	$37 809 002	$247 344 515	$255 303 314
10. Passenger train-miles	68 277 325	72 722 452	23 465 395	24 240 399	19 490 598	20 897 092	39 196 959	40 848 654	11 701 303	12 162 866	70 388 860	73 908 612
11. Passenger carrying car-miles	376 454 077	403 875 941	132 391 992	140 415 287	85 123 436	91 567 689	210 028 664	226 563 193	47 251 191	52 784 697	342 403 291	370 915 579
AVERAGES												
FREIGHT TRAFFIC:												
12. Miles per revenue ton per road	199.7	196.9	201.8	199.3	250.6	272.0	445.2	433.0	293.0	282.5	338.6	340.2
13. Revenue per ton-mile	1.482¢	1.426¢	1.414¢	1.366¢	1.430¢	1.351¢	1.400¢	1.364¢	1.362¢	1.340¢	1.400¢	1.355¢
14. Revenue per ton per road	$2.96	$2.81	$2.85	$2.72	$3.58	$3.68	$6.23	$5.90	$3.99	$3.79	$4.74	$4.61
COMMUTATION PASSENGER TRAFFIC:*												
15-01. Miles per passenger per road	20.7	20.5	12.9	12.5	20.7	20.5	18.4	18.8	10.0	10.0	19.6	19.7
16-01. Revenue per passenger-mile	2.38¢	2.24¢	2.66¢	2.45¢	1.93¢	1.93¢	1.92¢	1.85¢	1.37¢	1.57¢	1.93¢	1.89¢
17-01. Revenue per passenger per road	$0.49	$0.46	$0.34	$0.31	$0.40	$0.39	$0.35	$0.35	$0.14	$0.16	$0.38	$0.37
ALL OTHER PASSENGER TRAFFIC:												
15-02. Miles per passenger per road	77.0	77.7	271.5	269.5	142.8	155.6	359.4	354.0	282.9	281.8	263.9	269.6
16-02. Revenue per passenger-mile	3.50¢	3.27¢	2.85¢	2.71¢	2.35¢	2.22¢	2.37¢	2.25¢	2.63¢	2.48¢	2.40¢	2.27¢
17-02. Revenue per passenger per road	$2.70	$2.54	$7.75	$7.31	$3.35	$3.46	$8.53	$7.97	$7.44	$7.00	$6.33	$6.13
TOTAL PASSENGER TRAFFIC:												
15-03. Miles per passenger per road	44.1	45.0	94.9	95.6	66.6	71.8	164.9	172.0	282.1	281.1	125.4	132.5
16-03. Revenue per passenger-mile	3.19¢	3.00¢	2.84¢	2.69¢	2.27¢	2.17¢	2.34¢	2.23¢	2.63¢	2.48¢	2.36¢	2.24¢
17-03. Revenue per passenger per road	$1.41	$1.35	$2.69	$2.57	$1.51	$1.56	$3.87	$3.83	$7.41	$6.98	$2.96	$2.97
18. Revenue passenger-miles per train-mile	113.3	112.9	87.0	88.3	71.9	71.9	93.6	95.6	55.6	58.2	81.3	82.7
19. Revenue passenger-miles per car-mile	20.5	20.3	15.4	15.2	16.5	16.4	17.5	17.2	13.8	13.4	16.7	16.5

Represents an average of the mileage reported at the close of each month within the period.
1/ Includes dining and buffet service.
* Includes Commutation and Multiple Ride.

GPO 931303

Subject to revision

INTERSTATE COMMERCE COMMISSION
BUREAU OF TRANSPORT ECONOMICS AND STATISTICS

Statement No. M-220 (*OS-D*)

REVENUE TRAFFIC STATISTICS OF CLASS I RAILROADS IN THE UNITED STATES

JULY 1957

Compiled from 109 reports of revenue traffic statistics representing 114 railroads

(SWITCHING AND TERMINAL COMPANIES NOT INCLUDED)

FOR THE MONTH OF JULY 1957 AND 1956

ITEM	UNITED STATES		NEW ENGLAND REGION		GREAT LAKES REGION		CENTRAL EASTERN REGION		EASTERN DISTRICT		POCAHONTAS REGION	
	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956
AGGREGATES												
Miles of road operated at close of month:												
1. Freight service	221 524	221 929	5 867	5 889	22 361	22 431	22 424	22 438	50 652	50 758	7 898	7 898
2. Passenger service	112 825	115 568	3 363	3 517	11 068	11 225	9 274	9 581	23 705	24 323	3 890	4 119
3. Number of revenue tons carried	218 247 069	188 122 957	4 694 990	5 055 879	33 595 319	29 084 546	48 166 906	38 147 873	86 457 215	72 288 298	19 413 742	17 509 245
4. Number of revenue tons carried one mile (thous)	50 125 053	46 586 118	616 601	691 885	6 130 656	5 964 464	8 386 873	6 973 740	15 134 130	13 630 089	5 289 151	4 736 034
5. Freight revenue	$734 629 925	$670 305 467	$15 684 027	$16 234 011	$103 697 317	$94 250 661	$129 327 210	$108 711 936	$248 706 554	$219 196 608	$54 386 397	$48 987 279
6. Number of revenue passengers carried:												
6-01. Commutation passengers*	19 503 307	19 874 920	2 928 009	3 154 305	3 508 075	3 695 123	7 333 239	7 389 166	13 769 323	14 238 594	6 219	7 606
6-02. All other passengers	15 936 740	16 690 575	1 789 667	1 949 002	2 163 748	2 309 759	7 057 486	7 171 876	11 010 901	11 430 637	345 300	375 051
6-03. Total	35 440 047	36 565 495	4 717 676	5 103 307	5 671 823	6 004 882	14 390 725	14 561 042	24 780 224	25 669 231	351 519	382 657
7. Number of revenue passengers carried one mile:												
7-01. Commutation passengers*	393 132 670	401 051 046	66 129 642	70 348 840	68 509 371	73 250 622	157 272 587	159 645 575	291 911 600	303 245 037	156 309	188 405
7-02. All other passengers	2 235 807 552	2 390 684 052	130 553 928	150 825 808	284 704 662	329 081 894	414 900 513	418 154 219	830 159 103	698 061 521	49 228 824	55 062 673
7-03. Total	2 628 940 222	2 791 735 098	196 683 570	221 174 648	353 214 033	402 332 516	572 173 100	577 799 794	1 122 070 703	1 201 306 956	49 385 133	55 251 078
8. Passenger revenue:												
8-01. Commutation fares*	$9 339 446	$8 804 396	$1 417 856	$1 291 784	$1 774 721	$1 730 520	$3 962 691	$3 769 646	$7 155 268	$6 791 950	$2 644	$3 179
8-02. All other fares	$61 813 152	$63 342 078	$4 478 864	$4 484 127	$9 075 787	$10 170 949	$14 807 237	$14 520 648	$28 361 688	$29 175 724	$1 573 179	$1 524 013
8-03. Total	$71 152 598	$72 146 474	$5 896 720	$5 775 911	$10 850 508	$11 901 469	$18 769 928	$18 290 294	$35 517 156	$35 967 674	$1 575 823	$1 527 192
9. Passenger service train revenue 1/	$105 563 928	$108 928 699	$7 332 270	$7 485 830	$16 320 591	$17 823 386	$24 104 428	$23 772 265	$47 757 289	$49 081 481	$2 432 338	$2 460 239
10. Passenger train-miles	24 004 687	24 849 519	1 416 175	1 474 567	3 600 004	3 816 444	4 365 134	4 480 428	9 381 313	9 771 439	600 895	626 242
11. Passenger carrying car-miles	131 928 302	139 922 615	6 535 437	6 976 820	18 631 504	20 801 434	26 707 911	27 632 859	51 874 652	55 411 113	3 195 081	3 402 998
AVERAGES												
FREIGHT TRAFFIC:												
12. Miles per revenue ton per road	229.7	247.6	131.3	136.8	182.5	205.1	174.1	182.8	175.0	188.6	272.4	270.5
13. Revenue per ton-mile	1.466¢	1.439¢	2.544¢	2.346¢	1.691¢	1.580¢	1.542¢	1.559¢	1.643¢	1.608¢	1.028¢	1.034¢
14. Revenue per ton per road	$3.37	$3.56	$3.34	$3.21	$3.09	$3.24	$2.68	$2.85	$2.88	$3.03	$2.80	$2.80
COMMUTATION PASSENGER TRAFFIC:*												
15-01. Miles per passenger per road	20.2	20.2	22.6	22.3	19.5	19.8	21.4	21.6	21.2	21.3	25.1	24.8
16-01. Revenue per passenger-mile	2.38¢	2.20¢	2.14¢	1.84¢	2.59¢	2.36¢	2.52¢	2.36¢	2.45¢	2.24¢	1.69¢	1.69¢
17-01. Revenue per passenger per road	$0.48	$0.44	$0.48	$0.41	$0.51	$0.47	$0.54	$0.51	$0.52	$0.48	$0.43	$0.42
ALL OTHER PASSENGER TRAFFIC:												
15-02. Miles per passenger per road	140.3	143.2	72.9	77.4	131.6	142.5	58.8	58.3	75.4	78.6	142.6	146.8
16-02. Revenue per passenger-mile	2.76¢	2.65¢	3.43¢	2.97¢	3.19¢	3.09¢	3.57¢	3.47¢	3.42¢	3.25¢	3.20¢	2.77¢
17-02. Revenue per passenger per road	$3.88	$3.80	$2.50	$2.30	$4.19	$4.40	$2.10	$2.02	$2.58	$2.55	$4.56	$4.06
TOTAL PASSENGER TRAFFIC:												
15-03. Miles per passenger per road	74.2	76.3	41.7	43.3	62.3	67.0	39.8	39.7	45.3	46.8	140.5	144.4
16-03. Revenue per passenger-mile	2.71¢	2.58¢	3.00¢	2.61¢	3.07¢	2.96¢	3.28¢	3.17¢	3.17¢	2.99¢	3.19¢	2.76¢
17-03. Revenue per passenger per road	$2.01	$1.97	$1.25	$1.13	$1.91	$1.98	$1.30	$1.26	$1.43	$1.40	$4.48	$3.99
18. Revenue passenger-miles per train-mile	109.5	112.3	138.9	150.0	98.1	105.4	131.1	129.0	119.6	122.9	82.2	88.2
19. Revenue passenger-miles per car-mile	19.9	20.0	30.1	31.7	19.0	19.3	21.4	20.9	21.6	21.7	15.5	16.2

ITEM	EASTERN DISTRICT INCLUDING POCAHONTAS REGION		SOUTHERN REGION		NORTHWESTERN REGION		CENTRAL WESTERN REGION		SOUTHWESTERN REGION		WESTERN DISTRICT	
	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956	1957	1956
AGGREGATES												
Miles of road operated at close of month:												
1. Freight service	56 550	58 656	37 205	37 227	44 768	44 913	53 673	53 692	27 328	27 441	125 769	126 046
2. Passenger service	27 595	28 442	18 082	18 717	22 218	22 434	29 780	30 706	15 150	15 269	67 148	68 409
3. Number of revenue tons carried	105 870 957	89 797 543	34 780 927	35 260 133	32 589 059	18 471 868	28 090 701	27 108 968	16 915 425	17 484 445	77 595 185	63 065 281
4. Number of revenue tons carried one mile (thous)	20 423 281	18 366 123	6 693 794	6 686 777	6 539 831	5 730 384	11 817 301	11 198 982	4 650 846	4 603 852	23 007 978	21 533 218
5. Freight revenue	$303 096 951	$268 183 887	$95 786 036	$94 350 117	$93 052 101	$79 328 146	$176 379 502	$163 643 505	$66 313 335	$64 799 812	$335 744 938	$307 771 463
6. Number of revenue passengers carried:												
6-01. Commutation passengers*	13 775 542	14 246 200	2 060 493	2 152 360	1 949 266	1 838 370	1 717 356	1 637 132	650	856	3 667 272	3 476 360
6-02. All other passengers	11 356 201	11 805 688	1 079 949	1 152 492	1 490 797	1 517 770	1 614 483	1 791 084	395 310	423 541	3 500 590	3 732 395
6-03. Total	25 131 743	26 051 888	3 140 442	3 304 852	3 440 063	3 356 140	3 331 839	3 428 216	395 960	424 399	7 167 862	7 208 755
7. Number of revenue passengers carried one mile:												
7-01. Commutation passengers*	292 067 909	303 433 442	27 097 353	27 264 993	41 869 389	39 618 540	32 091 519	30 725 491	6 500	8 580	73 967 408	70 352 611
7-02. All other passengers	879 387 927	953 124 594	293 125 570	311 330 252	245 739 733	256 734 351	704 001 663	746 584 779	113 552 659	122 910 076	1 063 294 055	1 126 229 206
7-03. Total	1 171 455 636	1 256 558 036	320 222 923	338 595 245	287 609 122	296 352 891	736 093 182	777 310 270	113 559 159	122 918 656	1 137 261 463	1 196 581 817
8. Passenger revenue:												
8-01. Commutation fares*	$7 157 912	$6 795 129	$753 027	$669 972	$806 977	$750 126	$621 438	$589 038	$92	$131	$1 428 507	$1 339 295
8-02. All other fares	$29 935 067	$30 699 737	$7 918 937	$8 116 855	$5 334 089	$5 438 069	$15 652 143	$15 950 726	$2 972 916	$3 136 691	$23 959 148	$24 525 486
8-03. Total	$37 092 979	$37 494 866	$8 671 964	$8 786 827	$6 141 066	$6 188 195	$16 273 581	$16 539 764	$2 973 008	$3 136 822	$25 387 655	$25 864 781
9. Passenger service train revenue 1/	$50 189 627	$51 541 720	$13 445 916	$13 630 325	$10 064 409	$10 474 786	$26 241 729	$27 392 509	$5 622 247	$5 889 359	$41 928 385	$43 756 654
10. Passenger train-miles	9 982 208	10 397 681	3 321 746	3 367 999	2 930 291	3 112 865	6 053 538	6 208 209	1 716 904	1 762 765	10 700 733	11 083 839
11. Passenger carrying car-miles	55 069 933	58 814 111	18 070 404	19 216 729	15 194 251	15 770 321	36 283 230	37 984 241	7 310 484	8 137 213	58 787 965	61 891 775
AVERAGES												
FREIGHT TRAFFIC:												
12. Miles per revenue ton per road	192.9	204.5	192.5	189.6	200.7	310.2	420.7	413.1	274.9	263.3	296.5	341.4
13. Revenue per ton-mile	1.484¢	1.460¢	1.431¢	1.411¢	1.423¢	1.384¢	1.493¢	1.461¢	1.426¢	1.408¢	1.459¢	1.429¢
14. Revenue per ton per road	$2.86	$2.99	$2.75	$2.68	$2.86	$4.29	$6.28	$6.04	$3.92	$3.71	$4.33	$4.88
COMMUTATION PASSENGER TRAFFIC:*												
15-01. Miles per passenger per road	21.2	21.3	13.2	12.7	21.5	21.6	18.7	18.8	10.0	10.0	20.2	20.2
16-01. Revenue per passenger-mile	2.45¢	2.24¢	2.78¢	2.46¢	1.93¢	1.89¢	1.94¢	1.92¢	1.42¢	1.53¢	1.93¢	1.90¢
17-01. Revenue per passenger per road	$0.52	$0.48	$0.37	$0.31	$0.41	$0.41	$0.36	$0.36	$0.14	$0.15	$0.39	$0.39
ALL OTHER PASSENGER TRAFFIC:												
15-02. Miles per passenger per road	77.4	80.7	271.4	270.1	164.8	169.2	436.1	416.8	287.2	290.2	303.7	301.7
16-02. Revenue per passenger-mile	3.40¢	3.22¢	2.70¢	2.61¢	2.17¢	2.12¢	2.22¢	2.14¢	2.62¢	2.55¢	2.25¢	2.18¢
17-02. Revenue per passenger per road	$2.64	$2.60	$7.33	$7.04	$3.58	$3.58	$9.69	$8.91	$7.52	$7.41	$6.84	$6.57
TOTAL PASSENGER TRAFFIC:												
15-03. Miles per passenger per road	46.6	48.2	102.0	102.5	83.6	88.3	220.9	226.7	286.8	289.6	158.7	166.0
16-03. Revenue per passenger-mile	3.17¢	2.98¢	2.71¢	2.60¢	2.14¢	2.09¢	2.21¢	2.13¢	2.62¢	2.55¢	2.23¢	2.16¢
17-03. Revenue per passenger per road	$1.48	$1.44	$2.76	$2.66	$1.79	$1.84	$4.88	$4.82	$7.51	$7.39	$3.54	$3.59
18. Revenue passenger-miles per train-mile	117.4	120.8	96.4	100.5	98.2	95.2	121.6	125.2	66.1	69.7	106.3	108.0
19. Revenue passenger-miles per car-mile	21.3	21.4	17.7	17.6	18.9	18.8	20.3	20.5	15.5	15.1	19.3	19.3

1/ Includes dining and buffet service.

* Includes Commutation and Multiple Ride

3 816 444	4 365 134	4 480 428	9 381 313	9 771 439	600 895	626 242
20 801 434	26 707 911	27 632 859	51 874 652	55 411 113	3 195 081	3 402 998
205.1	174.1	182.8	175.0	188.6	272.4	270.5
1.580¢	1.542¢	1.559¢	1.643¢	1.608¢	1.028¢	1.034¢
$3.24	$2.68	$2.85	$2.88	$3.03	$2.80	$2.80
19.8	21.4	21.6	21.2	21.3	25.1	24.8
2.36¢	2.52¢	2.36¢	2.45¢	2.24¢	1.69¢	1.69¢
$0.47	$0.54	$0.51	$0.52	$0.48	$0.43	$0.42
142.5	58.8	58.3	75.4	78.6	142.6	146.8
3.09¢	3.57¢	3.47¢	3.42¢	3.25¢	3.20¢	2.77¢
$4.40	$2.10	$2.02	$2.58	$2.55	$4.56	$4.06
67.0	39.8	39.7	45.3	46.8	140.5	144.4
2.96¢	3.28¢	3.17¢	3.17¢	2.99¢	3.19¢	2.76¢
$1.98	$1.30	$1.26	$1.43	$1.40	$4.48	$3.99
105.4	131.1	129.0	119.6	122.9	82.2	88.2
19.3	21.4	20.9	21.6	21.7	15.5	16.2

ERN REGION	CENTRAL WESTERN REGION		SOUTHWESTERN REGION		WESTERN DISTRICT	
1956	1957	1956	1957	1956	1957	1956
44 913	53 673	53 692	27 328	27 441	125 769	126 046
22 434	29 780	30 706	15 150	15 269	67 148	68 409
18 471 868	28 090 701	27 108 968	16 915 425	17 484 445	77 595 185	63 065 281
5 730 384	11 817 301	11 198 982	4 650 846	4 603 852	23 007 978	21 533 218
$79 328 146	$176 379 502	$163 643 505	$66 313 335	$64 799 812	$335 744 938	$307 771 463
1 838 370	1 717 356	1 637 132	650	856	3 667 272	3 476 360
1 517 770	1 614 483	1 791 084	395 310	423 541	3 500 590	3 732 395
3 356 140	3 331 839	3 428 216	395 960	424 399	7 167 862	7 208 755
39 618 540	32 091 519	30 725 491	6 500	8 580	73 967 408	70 352 611
256 734 351	704 001 663	746 584 779	113 552 659	122 910 076	1 063 294 055	1 126 229 206